



General Assembly

Amendment

February Session, 2018

LCO No. 5810



Offered by:

SEN. FONFARA, 1st Dist.

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To: Senate Bill No. **417**

File No. 627

Cal. No. 388

***"AN ACT CONCERNING THE DEPARTMENT OF REVENUE
SERVICES' RECOMMENDATIONS REGARDING STATE TAXATION
AND COLLECTION."***

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Subsection (a) of section 12-829 of the general statutes is
4 repealed and the following is substituted in lieu thereof (*Effective July*
5 *1, 2018*):

6 (a) (1) On or after January 1, 2012, but prior to July 1, 2018, when
7 any person redeems a winning lottery ticket worth five thousand
8 dollars or more at the central office of the Connecticut Lottery
9 Corporation, the Connecticut Lottery Corporation shall check the
10 name and other identifying information of such person against a list of
11 taxpayers who are delinquent, supplied by the Commissioner of

12 Revenue Services.

13 (2) On or after July 1, 2018, when any person redeems a winning
14 lottery ticket worth two thousand dollars or more at the central office
15 of the Connecticut Lottery Corporation, the Connecticut Lottery
16 Corporation shall check the name and other identifying information of
17 such person against a list of taxpayers who are delinquent, supplied by
18 the Commissioner of Revenue Services.

19 Sec. 2. Subdivision (12) of subsection (a) of section 12-407 of the 2018
20 supplement to the general statutes is repealed and the following is
21 substituted in lieu thereof (*Effective December 1, 2018*):

22 (12) "Retailer" includes:

23 (A) Every person engaged in the business of making sales at retail or
24 in the business of making retail sales at auction of tangible personal
25 property owned by the person or others;

26 (B) [every] Every person engaged in the business of making sales for
27 storage, use or other consumption or in the business of making sales at
28 auction of tangible personal property owned by the person or others
29 for storage, use or other consumption;

30 (C) [every] Every operator, as defined in subdivision (18) of this
31 subsection;

32 (D) [every] Every seller rendering any service described in
33 subdivision (2) of this subsection;

34 (E) [every] Every person under whom any salesman, representative,
35 peddler or canvasser operates in this state, or from whom such
36 salesman, representative, peddler or canvasser obtains the tangible
37 personal property that is sold;

38 (F) [every] Every person with whose assistance any seller is enabled
39 to solicit orders within this state;

40 (G) [~~every~~] Every person making retail sales from outside this state
41 to a destination within this state [~~and not maintaining a place of~~
42 business in this state] who engages in regular or systematic solicitation
43 of sales of tangible personal property in this state (i) by the display of
44 advertisements on billboards or other outdoor advertising in this state,
45 (ii) by the distribution of catalogs, periodicals, advertising flyers or
46 other advertising by means of print, radio or television media, or (iii)
47 by mail, telegraphy, telephone, computer data base, cable, optic,
48 microwave, Internet or other communication system, for the purpose
49 of effecting retail sales of tangible personal property, provided such
50 person has gross receipts of at least two hundred fifty thousand dollars
51 and made [~~one~~] two hundred or more retail sales from outside this
52 state to destinations within this state during the twelve-month period
53 ended on the September thirtieth immediately preceding the monthly
54 or quarterly period with respect to which such person's liability for tax
55 under this chapter is determined;

56 (H) [~~any~~] Any person owned or controlled, either directly or
57 indirectly, by a retailer engaged in business in this state which is the
58 same as or similar to the line of business in which such person so
59 owned or controlled is engaged;

60 (I) [~~any~~] Any person owned or controlled, either directly or
61 indirectly, by the same interests that own or control, either directly or
62 indirectly, a retailer engaged in business in this state which is the same
63 as or similar to the line of business in which such person so owned or
64 controlled is engaged;

65 (J) [~~any~~] Any assignee of a person engaged in the business of leasing
66 tangible personal property to others, where leased property of such
67 person which is subject to taxation under this chapter is situated
68 within this state and such assignee has a security interest, as defined in
69 subdivision (35) of subsection (b) of section 42a-1-201, in such
70 property;

71 (K) [~~every~~] Every person making retail sales of items of tangible

72 personal property from outside this state to a destination within this
73 state [and not maintaining a place of business in this state] who repairs
74 or services such items, under a warranty, in this state, either directly or
75 indirectly through an agent, independent contractor or subsidiary;
76 [and]

77 (L) [every] Every person making sales of tangible personal property
78 or services through an agreement with another person located in this
79 state under which such person located in this state, for a commission
80 or other consideration that is based upon the sale of tangible personal
81 property or services by the retailer, directly or indirectly refers
82 potential customers, whether by a link on an Internet web site or
83 otherwise, to the retailer, provided the cumulative gross receipts from
84 sales by the retailer to customers in the state who are referred to the
85 retailer by all such persons with this type of an agreement with the
86 retailer, is in excess of two hundred fifty thousand dollars during the
87 preceding four quarterly periods ending on the last day of March,
88 June, September and December; and

89 (M) Any marketplace facilitator, as defined in section 4 of this act.

90 Sec. 3. Subdivision (15) of subsection (a) of section 12-407 of the 2018
91 supplement to the general statutes is repealed and the following is
92 substituted in lieu thereof (*Effective December 1, 2018*):

93 (15) (A) "Engaged in business in the state" means and, to the extent
94 not prohibited by the Constitution of the United States, includes, but
95 shall not be limited to, the following acts or methods of transacting
96 business: (i) Selling in this state, or any activity in this state in
97 connection with selling in this state, tangible personal property for use,
98 storage or consumption within the state; (ii) engaging in the transfer
99 for a consideration of the occupancy of any room or rooms in a hotel,
100 lodging house or bed and breakfast establishment for a period of thirty
101 consecutive calendar days or less; (iii) rendering in this state any
102 service described in any of the subparagraphs of subdivision (2) of this
103 subsection; (iv) maintaining, occupying or using, permanently or

104 temporarily, directly or indirectly, through a subsidiary or agent, by
105 whatever name called, any office, place of distribution, sales or sample
106 room or place, warehouse or storage point or other place of business or
107 having any representative, agent, salesman, canvasser or solicitor
108 operating in this state for the purpose of selling, delivering or taking
109 orders; (v) notwithstanding the fact that retail sales are made from
110 outside this state to a destination within this state, [and that a place of
111 business is not maintained in this state,] engaging in regular or
112 systematic solicitation of sales of tangible personal property in this
113 state by the display of advertisements on billboards or other outdoor
114 advertising in this state, by the distribution of catalogs, periodicals,
115 advertising flyers or other advertising by means of print, radio or
116 television media, or by mail, telegraphy, telephone, computer data
117 base, cable, optic, microwave, Internet or other communication system,
118 for the purpose of effecting retail sales of tangible personal property,
119 provided [one] at least two hundred fifty thousand dollars of gross
120 receipts are received and two hundred or more retail sales from
121 outside this state to destinations within this state are made during the
122 twelve-month period ended on the September thirtieth immediately
123 preceding the monthly or quarterly period with respect to which
124 liability for tax under this chapter is determined; (vi) being owned or
125 controlled, either directly or indirectly, by a retailer engaged in
126 business in this state which is the same as or similar to the line of
127 business in which the retailer so owned or controlled is engaged; (vii)
128 being owned or controlled, either directly or indirectly, by the same
129 interests that own or control, either directly or indirectly, a retailer
130 engaged in business in this state which is the same as or similar to the
131 line of business in which the retailer so owned or controlled is
132 engaged; (viii) being the assignee of a person engaged in the business
133 of leasing tangible personal property to others, where leased property
134 of such person is situated within this state and such assignee has a
135 security interest, as defined in subdivision (35) of subsection (b) of
136 section 42a-1-201, in such property; (ix) notwithstanding the fact that
137 retail sales of items of tangible personal property are made from
138 outside this state to a destination within this state, [and that a place of

139 business is not maintained in this state,] repairing or servicing such
140 items, under a warranty, in this state, either directly or indirectly
141 through an agent, independent contractor or subsidiary; and (x) selling
142 tangible personal property or services through an agreement with a
143 person located in this state, under which such person located in this
144 state, for a commission or other consideration that is based upon the
145 sale of tangible personal property or services by the retailer, directly or
146 indirectly refers potential customers, whether by a link on an Internet
147 web site or otherwise, to the retailer, provided the cumulative gross
148 receipts from sales by the retailer to customers in the state who are
149 referred to the retailer by all such persons with this type of agreement
150 with the retailer is in excess of two hundred fifty thousand dollars
151 during the four preceding four quarterly periods ending on the last
152 day of March, June, September and December.

153 (B) A retailer who has contracted with a commercial printer for
154 printing and distribution of printed material shall not be deemed to be
155 engaged in business in this state because of the ownership or leasing
156 by the retailer of tangible or intangible personal property located at the
157 premises of the commercial printer in this state, the sale by the retailer
158 of property of any kind produced or processed at and shipped or
159 distributed from the premises of the commercial printer in this state,
160 the activities of the retailer's employees or agents at the premises of the
161 commercial printer in this state, which activities relate to quality
162 control, distribution or printing services performed by the printer, or
163 the activities of any kind performed by the commercial printer in this
164 state for or on behalf of the retailer.

165 (C) A retailer not otherwise [a retailer] engaged in business in the
166 state who purchases fulfillment services carried on in this state by a
167 person other than an affiliated person, or who owns tangible personal
168 property located on the premises of an unaffiliated person other than a
169 marketplace facilitator, as defined in section 4 of this act, performing
170 fulfillment services for such retailer, shall not be deemed to be engaged
171 in business in [the] this state. For purposes of this subparagraph, (i)
172 persons are affiliated persons with respect to each other where one of

173 such persons has an ownership interest of more than five per cent,
174 whether direct or indirect, in the other, or where an ownership interest
175 of more than five per cent, whether direct or indirect, is held in each of
176 such persons by another person or by a group of other persons who
177 are affiliated persons with respect to each other, [For purposes of this
178 subparagraph,] and (ii) "fulfillment services" means services that are
179 performed by a person on its premises on behalf of a purchaser of such
180 services and that involve the receipt of orders from the purchaser of
181 such services or an agent thereof, which orders are to be filled by the
182 person from an inventory of products that are offered for sale by the
183 purchaser of such services, and the shipment of such orders outside
184 this state to customers of the purchaser of such services.

185 (D) A retailer not otherwise [a retailer] engaged in business in this
186 state that participates in a trade show or shows at the convention
187 center, as defined in subdivision (3) of section 32-600, shall not be
188 deemed to be engaged in business in this state, regardless of whether
189 the retailer has employees or other staff present at such trade shows,
190 provided the retailer's activity at such trade shows is limited to
191 displaying goods or promoting services, no sales are made, any orders
192 received are sent outside this state for acceptance or rejection and are
193 filled from outside this state, and provided further that such
194 participation is not more than fourteen days, or part thereof, in the
195 aggregate during the retailer's income year for federal income tax
196 purposes.

197 Sec. 4. (NEW) (*Effective December 1, 2018*) (a) As used in this section:

198 (1) "Marketplace facilitator" means any person who (A) facilitates
199 retail sales of at least two hundred fifty thousand dollars during the
200 prior twelve-month period by marketplace sellers by providing a
201 forum that lists or advertises tangible personal property subject to tax
202 under chapter 219 of the general statutes or taxable services, including
203 digital goods, for sale by such marketplace sellers, (B) directly or
204 indirectly through agreements or arrangements with third parties,
205 collects receipts from the customer and remits payments to the

206 marketplace sellers, and (C) receives compensation or other
207 consideration for such services;

208 (2) "Marketplace seller" means any person who has an agreement
209 with a marketplace facilitator regarding retail sales of such person,
210 whether or not such person is required to obtain a permit under
211 section 12-409 of the general statutes; and

212 (3) "Forum" means a physical or electronic place, including, but not
213 limited to, a store, a booth, an Internet web site, a catalog or a
214 dedicated sales software application, where tangible personal property
215 or taxable services are offered for sale.

216 (b) A marketplace facilitator shall be considered the retailer of each
217 sale such facilitator facilitates on its forum for a marketplace seller.
218 Each marketplace facilitator shall (1) be required to collect and remit
219 for each such sale any tax imposed under section 12-408 of the general
220 statutes, (2) be responsible for all obligations imposed under chapter
221 219 of the general statutes as if such marketplace facilitator was the
222 retailer of such sale, and (3) in accordance with the provisions of
223 subdivision (3) of section 12-426 of the general statutes, keep such
224 records and information as may be required by the Commissioner of
225 Revenue Services to ensure proper collection and remittance of said
226 tax.

227 (c) Any marketplace seller who is a retailer with a valid permit
228 issued under section 12-409 of the general statutes shall not be
229 required to collect the tax imposed under chapter 219 of the general
230 statutes for a particular sale and shall not include the receipts from
231 such sale in its taxable receipts for purposes of its return under section
232 12-414 of the general statutes, if: (1) The marketplace seller can show
233 that such sale was facilitated by a marketplace facilitator (A) with
234 whom the marketplace seller has a contract that explicitly provides
235 that the marketplace facilitator will collect and remit sales tax on all
236 taxable sales such facilitator facilitates for such seller, or (B) from
237 whom such seller requested and received in good faith a properly

238 completed certificate of collection certifying that such facilitator is
239 registered to collect sales tax and will collect sales tax on all taxable
240 sales by such seller and facilitated by such facilitator; and (2) any
241 failure of such facilitator to collect the proper amount of tax for such
242 sale was not the result of such seller providing such facilitator with
243 incorrect information. The commissioner shall administer the
244 provisions of this subsection in a manner consistent with section 12-
245 410 of the general statutes and as if the language of said section had
246 expressly referred to a certificate of collection under this section.

247 (d) Any purchaser of tangible personal property or taxable services
248 who overpaid sales or use tax to a marketplace facilitator may submit a
249 claim for refund with the commissioner in accordance with the
250 provisions of section 12-425 of the general statutes, in such form and
251 manner as the commissioner prescribes. No such purchaser shall have
252 a cause of action against a marketplace facilitator for the recovery of
253 any such overpayment under any provision of the general statutes.

254 Sec. 5. (NEW) (*Effective December 1, 2018*) (a) As used in this section,
255 "marketplace facilitator" and "marketplace seller" have the same
256 meanings as provided in section 4 of this act.

257 (b) For a taxable sale occurring on or after December 1, 2018, but on
258 or before December 31, 2019, if a marketplace facilitator incurs liability
259 for failure to collect the tax due under chapter 219 of the general
260 statutes on a taxable sale, the commissioner shall limit such liability in
261 accordance with the provisions of subdivision (1) of subsection (c) of
262 this section if such facilitator can show to the satisfaction of the
263 Commissioner of Revenue Services that (1) such facilitator and the
264 marketplace seller are not affiliated persons, as described in
265 subparagraph (C) of subdivision (15) of subsection (a) of section 12-407
266 of the general statutes, as amended by this act, (2) the failure to collect
267 sales tax due was not due to an error in sourcing the sale, and (3) such
268 sale occurred on or before December 31, 2019. The commissioner shall
269 prescribe the form and manner in which a marketplace facilitator may
270 request the relief in this subsection.

271 (c) (1) The commissioner shall limit the liability of a marketplace
272 facilitator who the commissioner deems to have satisfied the
273 provisions of subdivisions (1) to (3), inclusive, of subsection (b) of this
274 section by reducing the total amount of tax due under chapter 219 of
275 the general statutes on taxable sales facilitated by such facilitator and
276 sourced to this state by five per cent, reducing the interest due by a
277 corresponding amount and waiving any associated penalties.

278 (2) The commissioner may limit the liability of a marketplace seller
279 who incurs liability for tax due under chapter 219 of the general
280 statutes on a taxable sale that was made through a marketplace
281 facilitator to the same extent as provided under subdivision (1) of this
282 subsection, provided the commissioner deems the provisions of
283 subdivisions (1) to (3), inclusive, of subsection (b) of this section to be
284 satisfied.

285 Sec. 6. (NEW) (*Effective December 1, 2018*) (a) As used in this section:

286 (1) "Referral" or "refer" means the transfer by a referrer of a potential
287 purchaser to a seller who advertises or lists tangible personal property
288 for sale on or in the referrer's medium; and

289 (2) "Referrer" means any person who (A) contracts or otherwise
290 agrees with a seller to list or advertise for sale one or more items of
291 tangible personal property by any means, including an Internet web
292 site and a catalog, provided such listing or advertisement includes the
293 seller's shipping terms or a statement of whether the seller collects
294 sales tax, (B) offers a comparison of similar products offered by
295 multiple sellers, (C) receives commissions, fees or other consideration
296 in excess of one hundred twenty-five thousand dollars during the prior
297 twelve-month period from a seller or sellers for such listings or
298 advertisements, (D) refers, via telephone, Internet web site link or
299 other means, a potential customer to a seller or an affiliated person of a
300 seller, as described in subparagraph (C) of subdivision (15) of
301 subsection (a) of section 12-407 of the general statutes, as amended by
302 this act, and (E) does not collect payments from the customer for the

303 seller. For purposes of this subdivision, "shipping terms" does not
304 mean a seller's mere mention of general shipping costs in the seller's
305 own listing or advertisement.

306 (b) Each referrer shall, to the extent not prohibited by the
307 Constitution of the United States:

308 (1) Post a conspicuous notice on or in such referrer's medium that
309 informs consumers (A) that sales or use tax is due from Connecticut
310 purchasers on certain purchases, (B) that the seller might not collect
311 and remit sales tax on a purchase, (C) that Connecticut requires
312 Connecticut purchasers to file a use tax return if sales tax is not
313 imposed at the time of the sale by the seller, (D) of the instructions for
314 obtaining additional information from the Department of Revenue
315 Services regarding the remittance of sales and use taxes on purchases
316 made by Connecticut purchasers, and (E) that such notice is being
317 provided pursuant to this section;

318 (2) Provide, not later than July 1, 2019, a quarterly notice to each
319 seller to whom such referrer transferred during the previous calendar
320 year a potential purchaser located in this state that contains (A) a
321 statement that Connecticut imposes a sales or use tax on sales made to
322 Connecticut purchasers, (B) a statement that a seller making sales to
323 Connecticut purchasers must collect and remit sales and use taxes to
324 the Department of Revenue Services, and (C) instructions for obtaining
325 additional information regarding the Connecticut sales and use taxes
326 from said department.

327 (c) Not later than January 31, 2020, and annually thereafter, each
328 referrer shall submit a report electronically, in a form and manner
329 prescribed by the Commissioner of Revenue Services, to the
330 commissioner that contains (A) the name and address of each seller
331 who received a notice pursuant to subsection (b) of this section in the
332 calendar year immediately preceding, and (B) the name and address of
333 each seller for which the referrer knows that such seller (i) listed or
334 advertised such seller's tangible personal property on or in such

335 referrer's medium, and (ii) collected and remitted Connecticut sales
336 and use taxes."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2018</i>	12-829(a)
Sec. 2	<i>December 1, 2018</i>	12-407(a)(12)
Sec. 3	<i>December 1, 2018</i>	12-407(a)(15)
Sec. 4	<i>December 1, 2018</i>	New section
Sec. 5	<i>December 1, 2018</i>	New section
Sec. 6	<i>December 1, 2018</i>	New section